

TESTIMONY OF JAMES NEIL
DIRECTOR OF OPERATIONS
STATE MARSHAL COMMISSION
JUDICIARY COMMITTEE
MARCH 26, 2009

Good Morning, Senator McDonald, Representative Lawlor, and members of the Judiciary Committee. My name is James Neil and I am the Director of Operations for the State Marshal Commission. As you know, the State Marshal Commission (SMC) oversees and regulates the complex operations of Connecticut's State Marshals.

Raised Bill 6710 - An Act Concerning Court Operations

As I stated in my testimony on a variety of bills on March 19, 2009, in my position as the Director of Operations at the State Marshal Commission, there is no single responsibility that State Marshals have that is greater than the service of Temporary Restraining Orders (TRO). And although the current system that is in place at every civil courthouse in Connecticut is working very well, there are improvements that can be made.

Raised Bill 6710 can help to improve the service of process in general, and the service of TROs in particular - I support its passage. Specifically, I support the changes to CGS 52-261 (Section 13 of RB 6710) and CGS 52-261a (Section 14 of RB 6710) which are germane to the service of process. These two sections allow the entity paying for the service, the Judicial Branch or any other state agency for example, to pay reasonable mileage costs for that service. Currently the statutes allow only for one trip from the place process is received to the place process is served - for the shortest route possible. These changes remove any disincentive for the State Marshals to "go the extra mile" to complete service.

Concerns Regarding the proposed budget vis a vis the State Marshal Commission

During times of general economic hardship State Marshals see an increase in their workload. The steep rise in home and business foreclosures, the eviction of families and businesses from their homes and commercial space, and the increase in litigation and the associated execution of judgments as individuals and companies look to gain every financial advantage possible all place additional stress and work on the ranks of Connecticut's State Marshals. It is during this time that more oversight is needed, not less. State Marshals assist citizens in countless areas from civil and family court matters, housing court and probate court matters and numerous other legal and administrative procedures. Additionally, State Marshals execute city and state tax warrants and in 2007, State Marshals collected more than \$10 million for Connecticut's

cities and municipalities. Also under the direction of the SMC the State Marshals cover the service of restraining orders every day and in every courthouse helping to protect the citizens of Connecticut from harm. It is during this time that the mission of the SMC is more critical than ever.

The constitution of Connecticut establishes three distinct branches of government, executive, legislative and judicial. Exclusive functions exist in each, but areas overlap, such as service of process and the execution of judgments, the mainstays of the mission and business of state marshals. The constitution, under Article first, section ten, provides people with a constitutional right to open access to courts and remedies for injuries through due course of law without sale, denial or delay. All three branches protect these rights.

The legislature under its duties establishes laws regarding rights and remedies including procedures for service of process and the execution of judgments in civil matters and the regulation of such procedures, including statutory caps on fees for service and execution to ease access. The executive branch enforces such laws and the judicial branch, through the application of statutes, Practice Book provisions and case law ensures the administration of justice. Each branch of government also has a constitutional obligation, under separation of powers principles, not to act so as to significantly interfere with the orderly functioning of another branch. A failure by the state to ensure these functions could lead to liability claims against the state.

Prior to 2000, the constitutional significance of civil process and executions was reflected in the position of sheriff being placed in the constitution where it had been for more than 200 years. When this provision was repealed in 2000, the legislature established the State Marshal Commission to oversee and regulate state marshals. As the Attorney General has noted, service of process in Connecticut has always been considered a sovereign function of government entrusted to public officials empowered by law. State marshals are public officers who take an oath to uphold the Constitution and the laws of Connecticut.

The legislature, in 2000, carefully considered its obligations under the constitution and to each branch of government in this area. To that end it created the State Marshal Commission, with commission members appointed by all three branches of government, and placed the Commission in the executive branch for administrative purposes only. In order to make an appropriate delegation of its regulatory powers to the Commission, the legislature had to declare its policy on service of process and execution of judgments, establish primary standards for carrying it out, to which the Commission needed to conform and to ensure proper regard for the protection of the public interest. It appropriately did so through statutory enactments creating the State Marshal Commission.

The current budget proposes the elimination of the State Marshal Commission and placing the myriad and complex regulatory functions solely in the executive branch without funding and putting the constitutional duties of all three branches at issue. It also puts the judicial branch at risk for a substantial destabilization of its courts and civil matters in general. The current system is running well, due in part to the unsung consistency of the state marshals and the careful oversight of the SMC. Millions of dollars of third-party money and hundreds of thousands of services and executions are handled by State Marshals every year under the guidance of the SMC. The nature of State Marshals' tasks and the need for State Marshals to be competent, accountable public officials under appropriate oversight creates unique regulatory needs that the SMC fulfills. Consider that even a few short days of the serious disruption of state marshal work would create havoc in the judicial branch.

In Connecticut there is a right to open access to courts to commence and pursue redress for injuries after due course of law. If an individual is denied open access or remedies, through the denial of service of valid process or the execution of a judgment based on the lack of regulation, or inadequate regulation by the state over such procedures and state marshals, the state could face liability claims under the constitution and state statutes. That is one of the reasons state marshals are bonded. Just a few claims would cost the state more money than is currently allocated to the SMC. Additionally, disruption to the orderly functioning of the judicial branch would raise claims under the separation of powers doctrine and could engender additional claims or costs to re-stabilize the system.

Given the constitutional framework, the state has an obligation to maintain a system for viable, regulated service of process and execution of judgments. The recommendation to eliminate the State Marshal Commission and to remove all funding does not address the constitutional needs and obligations of the three branches of government. Money will inevitably have to be allocated to regulate service of process and execution of judgments and state marshals, as a core government function and to protect the state from liability. The State Marshal Commission balances the interests of the branches and is extremely cost effective.

It is critical that the SMC be retained with reasonable funding for staff.